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82-482

NO.

IN THE SUPREME COURT

of the

UNITED STATES

---

October Term, 1982

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WILLIAM L. HAMILTON
and
JUANITA S. MEAD, APPELLANTS

v.

COMMONWEALTH OF VIRGINIA
APPELLEE

---

ON APPEAL FROM THE SUPREME COURT OF VIRGINIA

JURISDICTIONAL STATEMENT

---

Malcolm G. Crawford, Esquire
Counsel of Record for the
Appellants
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## QUESTIONS PRESENTED BY APPEAL

1. Do §19.2-187 and §19.2-187.1 of the Code of Virginia 1950, as amended, as applied by the trial court and approved by the Supreme Court of Virginia, violate the Confrontation Clause of the Sixth Amendment of the Constitution of the United States and the Due Process Clause of the Fourteenth Amendment in that said statutes authorized an objected to Certificate of Analysis to be admitted into evidence when:

(A) Neither the person who performed the analysis nor anyone else who had knowledge of the opinion expressed therein was available for cross-examination even though Appellants had caused a summons to be issued to secure the presence of said analyst;

(B) The certificate contained no

indicia of reliability on its face;

(C) The certificate reportedly connects Appellants with the commission of the crime;

(D) The prosecution made no showing as to the unavailability of the analyst or even his whereabouts, and

(E) The prosecution failed to produce said certificate although all relevant scientific reports were specifically requested by Appellants and ordered to be produced by the trial court.

2. Does Rule 5:20 of the Rules of the Supreme Court of Virginia authorizing denial of a Petition for Appeal by "Notice" violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution since Appellants' felony convictions are predicated on evidence allegedly admitted in violation of their constitutional rights, but said convictions are not supported by any opinion that effectively addresses and properly resolves the constitutional issues raised?

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## REPORTS OF OPINIONS DELIVERED IN THE COURTS BELOW

No written opinion was delivered by the Supreme Court of Virginia or by the trial Court. The order of the Supreme Court dated June 4, 1982, "finding no reversible error..." is set forth in the Appendix, infra at A-31 and the order of the trial Court is is set forth in the Appendix, infra at A7-30.

The overruling of Appellants' objection by the trial Judge and the argument preceeding the ruling are set forth in the Appendix, infra at A1-6.

## STATEMENT OF GROUNDS INVOKING JURISDICTION

This is an appeal from the order dated June 4, 1982 of the Supreme Court of Virginia which refused Appellants' Petition for Appeal. The Petition for Appeal, filed on November 9, 1981, prayed that an Appeal be granted from their

convictions on July 9, 1981 in the Circuit Court of Bath County of breaking and entering and grand larceny. Your Appellants filed their Notice of Appeal in the Supreme Court of Virginia on August 30, 1982. Said Notice of Appeal is set forth in the Appendix, infra at A32-33. Jurisdiction of this court is invoked pursuant to 28 U.S.C. §1257(2). This appeal challenges the constitutionality of §19.2-187 and 19.2-187.1 of the Code of Virginia 1950, as amended, on the grounds they are repugnant to the Constitution of the United States, Amendments VI and XIV, in that said statutes, as applied by the lower courts, denied your Appellants the right to (1) confront and cross-examine the analyst who prepared the Certificate of Analysis in violation of the Sixth and Fourteenth Amendments and (2) discovery of the Certificate of Analysis which was material and had been specifically requested by Appellants and ordered to be produced

by the trial Court. This appeal also challenges the constitutionality of Rule 5:29 of the Rules of the Supreme Court of Virginia to the extent that said rule authorizes the Supreme Court of Virginia to dispose of Constitutional Rights, the violation of which was alleged by Appellants, without any written opinion in the record effectively addressing and properly resolving the issues raised.

## CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

This case involves Amendments VI and XIV of the Constitution of the United States, Sections 19.2-187 and 19.2-187.1 of the Code of Virginia 1950, as amended, and Rule 5:29 of the Rules of the Supreme Court of Virginia. Said constitutional amendments, statutes and rule are set forth in the Appendix, infra A45-49.

## STATEMENT OF THE CASE

On August 17, 1980, an automobile

was reported stolen from a store house in Bath County, Virginia. A cannibalized automobile with a corresponding I.D. Number was found in West Virginia. Pursuant to a search warrant, a right and left valve cover were seized in an outbuilding located on Appellants' premises. These valve covers and the right and left engine heads of the vehicle found in West Virginia were sent to the Western Laboratory of the Commonwealth of Virginia's Division of Consolidated Laboratory Services, Bureau of Forensic Science, located in Roanoke, Virginia where they were apparently examined by James E. Hamby, hereinafter referred to as "analyst". A Certificate of Analysis, hereinafter referred to as "certificate", (a copy of which is contained in the Appendix, infra at A34-36) purportedly signed by the analyst before a Notary Public, was filed on September 10, 1980, in the General District Court of Bath County. No notice of said filing was given to the defense. Subsequent to this filing

but prior to any preliminary hearing in said court, the Commonwealth's Attorney nolle prossed the original arrest warrants. Appellants were indicted on identical charges in the Circuit Court of Bath County. The trial Judge pursuant to Appellants' Motion for Discovery ordered on October 17, 1980, that the Commonwealth produce all relevant scientific reports. Said Discovery Order is set forth in the Appendix infra at A37-41.

On June 20, 1981, the Commonwealth's Attorney filed said certificate in the Clerk's Office of the Circuit Court of Bath County, but again no notice was given to your Appellants of the filing. Your Appellants learned of the certificate on July 2, 1981. Pursuant to §19.2-187.1 of the Code of Virginia 1950, as amended, the defense requested the Clerk to summons the analyst. (See Appendix, infra at A-42) Apparently because of the Fourth of July holiday, the summons was not issued until

July 6, 1981. The summons does not show whether service was effected. At the trial held on July 8 and 9, 1981, Appellants objected to the introduction of the certificate because the analyst was not present to be cross-examined by your Appellants, and Appellants were unaware of the existence of the certificate until July 2, 1982. The prosecution never stated any reasons why the analyst was not available at trial. The trial Court overruled Appellants' objection stating without explanation: "the defense has not used due diligence to acquire his presence here." (contained in Appendix, infra at A1-6)

## REASONS WHY QUESTIONS PRESENTED ARE SUBSTANTIAL

1. The decision below implicity sustaining the statutes in question directly conflicts with the Sixth and Fourteenth Amendments of the Constitution of the

United States and the decisions of this Court.

The right granted to an accused by the Sixth Amendment to confront the witnesses against him, which includes the right to cross-examination, is a fundamental right essential to a fair trial and is made obligatory on the states by the Fourteenth Amendment. Pointer v. Texas, 380 U.S. 400, 85 S.Ct. 1065, 13 L.Ed. 2d 923 (1965). In 1895, this Court stated that

> "the primary object of the (Confrontation Clause of the Sixth Amendment)...was to prevent depositions or ex parte affidavits ...being used against the prisoner in lieu of a personal examination and cross-examination of the witnesses in which the accused has an opportunity not only of testing the recollection and sifting the conscience of the witness, but of compelling him to stand face to face with the jury in order that they may look at him, and judge by his demeanor upon the stand whether he is worthy of belief." Mattox v. United States, 156 U.S. 237, 242-243, 15 S.Ct. 337, 339, 39 L.Ed. 409 (1895). See also Barber v. Page, 390 U.S. 719, 721, 88 S.Ct. 1318, 20 L.Ed. 2d 255 (1968).

The certificate was simply an ex parte affidavit and clearly hearsay, but the trial Judge apparently concluded that §19.2-187 of the Code of Virginia 1950, as amended, authorized the introduction of such hearsay in the instant case.

It is conceded that the Confrontation Clause has never been interpreted to bar all hearsay evidence in a criminal trial. Mattox v. United States, supra, Mancusi v. Stubbs, 408 U.S. 204, 92 S.Ct. 2308, 33 L.Ed. 2d 293 (1972), Dutton v. Evans, 400 U.S. 74, 91 S.Ct. 210, 27 L.Ed. 2d 213 (1970). On the other hand, no particular declaration is necessarily free from a constitutional violation of the right to confrontation simply because it is admissible under a hearsay exception in the state's rules of evidence. Dutton v. Evans, id. Speaking for the Court in California v. Green, 399 U.S. 149, 155-56, 90 S.Ct. 1930, 26 L.Ed. 2d 489 (1970), Mr. Justice

White said:

> While it may readily be conceded that hearsay rules and the Confrontation Clause are generally designed to protect similar values, it is quite a different thing to suggest that the overlap is complete and that the Confrontation Clause is nothing more or less than a codification of the rules of hearsay and their exceptions as they existed historically at common law. Our decisions have never established such a congruence; indeed, we have more than once found a violation of confrontation values even though the statements in issue were admitted under an arguably recognized hearsay exception. See Barber v. Page, 390 U.S. 719 (88 S.Ct. 1318, 20 L.Ed. 2d 255); Pointer v. Texas, 380 U.S. 400 (85 S.Ct. 1065, 13 L.Ed. 2d 923.)

It is respectfully submitted that previous cases of this Court hold there is no violation of a defendant's right to confront the witnesses against him if objected to hearsay is admitted when:

First: The declarant is present at trial to be cross-examined on his statement. California v. Green, supra.

Second: The evidence offered under

the hearsay exception bears its own "indicia of reliability" Dutton v. Evans, supra 400 U.S. at 89, California v. Green, supra 399 U.S. at 149, Mancusi v. Stubbs, 408 U.S. at 216, and either:

A. The hearsay is not offered to prove an essential element of the crime or to connect the defendant directly to the commission of the crime, or in other words, the statement is neither "crucial" to the prosecution nor "devastating" to the defense, Dutton v. Evans, 400 U.S. at 87, or

B. The declarant is legally "unavailable", i.e. (1) the prosecution has made a good faith effort to secure the witness, Barber v. Page, supra 390 U.S. at 724, 725 or (2) the declarant cannot be produced, Mancusi v. Stubbs, supra, Mattox v. United States, supra.

Addressing the facts in the instant case, it is clear that none of the criteria mentioned are present.

First: The witness was not present at trial although summoned by the defense.

Second: There are no indicia of reliability contained in the analysis. There is nothing to indicate that this particular employee of the state was any more honest, reliable or correct in his opinion than any other witness. Opinion testimony has normally been excluded unless provided by an expert, but no qualifications are evident from the certificate itself. Regardless, no cross-examination was possible concerning whether the analyst was qualified, what procedures, mechanical devices, chemical tests, etc. he used to reach his opinion, nor to test his degree of certainty. Quoting from Wigmore §1357, this court has stated: "Confrontation...forces the witness to submit to cross-examination, the greatest legal engine ever invented for the discovery of the truth." California v. Green, supra 399 U.S. at 158.

Third: The certificate was crucial to the prosecution and devastating to the defense because it opines that the valve covers found on the premises of the defendants were removed from the stolen car.

Fourth: The Commonwealth did not make a good faith effort to obtain the presence of the desired witness, and apparently made no effort other than preparing a summons that was never served or attempted to be served on the analyst. There is nothing in the record to establish that the witness was unavailable. As an employee of the State, a simple phone call might have secured his presence.

In conclusion, the certificate was simply an ex parte affidavit, the admission of which has been condemned by this court as early as 1895, U.S. v. Mattox, supra 156 U.S. at 242-43. It denied to your defendants the right to cross-examine the witness, thereby denying them the Fourteenth Amendment's guarantee of due process of

law. Pointer v. Texas, supra, 380 U.S. at 405.

This case is of substantial interest in that it involves statutes that modified the hearsay rules of the Commonwealth and those of the common law. The creation of a new hearsay exception for the admission of evidence against a defendant, raises "...questions of compatibility with the defendant's constitutional right to confrontation. Such questions require attention to the reasons for, and the basic scope of, the protections offered by the Confrontation Clause." California v. Green, 399 U.S. at 156. Furthermore, various State and Federal Courts have greatly differed on their interpretations of whether lab reports violate the Confrontation Clause. For example, Virginia apparently still adheres to the rule that the right to be confronted with one's accusers and witnesses does not

operate to exclude proper laboratory reports especially if such evidence contains "no opinion." Robertson v. Commonwealth, 211 VA 62, 175 S.E. 2d 260 (1970). The same case was similarly decided in the Federal District Court for the Western District of Virginia. Robertson v. Cox, 320 Supp. 900 (W.D. VA 1970), citing with approval Kay v. United States, 255 F2d 476 (4th Cir.) cert. denied, 358 U.S. 825, 795 Ct. 42, 2 L.Ed. 2nd 65 (1958). See also United States ex rel Lurry v. Johnson, 378 F. Supp. 818 (E.D. Pa. 1974). It is respectfully submitted these cases are in conflict with the decision of the Courts of Appeal for the Sixth Circuit, Phillips v. Neil, 452 F 2d 337, cert. denied 409 U.S. 884, 935 S.Ct. 96, 34 L.Ed. 2d 141 (1972), and the Second Circuit, United States v. Oates, 560 F. 2d 45 (1977). See also United States v. Puco, 476 F 2d 1099 (2d Cir.) cert. denied 414 U.S. 844, 94 S.Ct. 106,

38 L.Ed. 2d 82 (1973), Reardon v. Manson, 491 F. Supp. 982, remanded on other grounds, 644 F. 2d 122 (1981). For a state case supporting the position of your Appellants, see State v. Henderson, 554 S.W. 2d 117 (Tenn. 1977); for a state case, factually distinguishable from the instant case admitting a lab report, see State v. Krek, 86 Wash., 2d 112, 542 P 2d 782, 784 (1975).

The Virginia statutes as interpreted by the Trial Court and Virginia Supreme Court are unconstitutional in that they required that Appellants produce the witness. The statute provides that the defendant has the "right to call the person performing such analysis or examination...as a witness therein and examine him in the same manner as if he had been called as an adverse witness." This right is meaningless, however, if even though the defense has the person summoned as soon as it learns of the

existence of the analysis, the constitutional right can be subverted if for some unknown reason the analyst fails to appear. In fact, the failure to produce the witness violated your Appellants' constitutional right also guaranteed under the Sixth Amendment "...to have compulsory process for obtaining witnesses...."

They are further unconstitutional in that they did not provide that the certificate was inadmissible if not disclosed pursuant to a specific discovery request order. The failure on the part of the Commonwealth's Attorney to furnish the requested material was prejudicial to Appellants. It effectively prevented them from securing the attendance of the analyst which Virginia Statutes, as interpreted by the Court below, required. Appellants contend that the evidence produced by having the analyst present at trial would have been material and exculpatory. They believe, and therefore allege, that doubt would have been cast upon his opinion and

conclusion expressed therein. In this case, as in Brady v. Maryland, 373 U.S. 83 (1963), the request for the scientific report was specific. Mr. Justice Stevens in the majority opinion of United States v. Agurs, 427 U.S. 97 at 106 (1975) stated:

> It gave the prosecutor notice of exactly what the defense desired. Although there is, of course, no duty to provide defense counsel with unlimited discovery of everything known by the prosecutor, if the subject matter is material, or indeed if a substantial basis for claiming materiality exists, it is reasonable to require the prosecutor to respond either by furnishing the information or by submitting the problem to the trial Judge. When the prosecutor receives a specific and relevant request, the failure to make any response is seldom, if every, excusable.

The report was clearly material, and Appellants were prejudiced by the inexcusable failure of the Commonwealth's Attorney to disclose it. In addition to the failure to produce the aforesaid certificate, the Commonwealth's Attorney,

as alleged in Appellants' Petition for Appeal to the Supreme Court of Virginia, failed to produce other scientific reports, e.g. a Certificate of Analysis that no fingerprints were on the valve covers, and an exculpatory statement by Ed Cook, an alibi witness for the defense, which was effectively but improperly used by the Commonwealth at trial to cross-examine said witness. In light of the fact that the Commonwealth's Attorney failed to produce certain material required by the Discovery Order and the Constitution, it is respectfully requested that this Court require the Commonwealth's Attorney to file with this court all scientific reports and, as requested in Appellants' Petition for Appeal, the Prosecutor's report prepared by Officer Chapman.

With regard to the second question presented, Appellants contend that the failure

of either the trial court or the Supreme Court of Virginia to prepare a written opinion concerning Appellants' allegations of denial of Constitutional rights places on them an unconstitutional burden on appeal. This in turn denies them th; right of due process of law guaranteed under the Fourteenth Amendment. Due process necessarily means the right to review the actions of trial Court and lower Appellate Courts. Since Appellants convictions did not include confinem nt, they are precluded from raising the constitutional issues by habeas corpus. Thus, this court is the sole forum for any relief to Appellants. It is respectfully submitted that without a written opinion this Court has the difficult burden of determining the facts found, and the law applied by the lower Courts. It is respectfully submitted that this Court should hold that

a state felony conviction predicated upon material evidence the admission of which is alleged to have violated a right guaranteed by the Constitution, must be supported by a written opinion that effectively addresses and properly resolves the Constitutional issue.

For the foregoing reasons, the question presented is so substantial as to require plenary consideration, with briefs on the merits and oral argument, for its resolution.

Respectfully submitted,

Malcolm H. Crawford

Officer Bryan was present when they were removed from the engine assembly. Deputy Armstrong was there at the time. Deputy Armstrong took them back to the jail. If the Court wants, I'll bring Deputy Armstrong in to (inaudible) that link. They have been under lock and key before and since, I mean, it's theoretically possible, somebody substituted a whole big engine, but I think it's stringy, but I'll certainly put Deputy Armstrong on.

JUDGE BYRD: All..

MR CRAWFORD: At this time, I would also like to renew my objection that I made earlier in chambers to the introduction of this exhibit at, at, without the opportunity to cross-examine the analysis..the person that did the analysis.

JUDGE BYRD: All right, I will admit the analysis subject to closing the gap with Deputy Armstrong. And overrule your objection on the basis of the laboratory analysis not..

MR. CRAWFORD: Someone is knocking on the door over here.

JUDGE BYRD: Over here? Somebody.. (inaudible) Mr. Crawford, I will overrule your objection on the basis of Mr. Hamby not being here on the basis that I feel that the defense has not used due diligence to acquire his presence here. And I will again introduce this, after the, subject to the chain, with Deputy Armstrong being shown.

MR. CRAWFORD: Your Honor, will..

JUDGE BYRD: Pardon? Oh, O.K.

MR CRAWFORD: I would just like the record to reflect that the Commonwealth never in any discovery indicated that such certificate of analysis existed and that the defense found out about this analysis only on the very day it was filed, the day after it was filed, six days prior to trial and that there of those, you know, three of those days, were weekends or holidays.

JUDGE BYRD: What is your response to

that, Mr. Singleton?

MR. SINGLETON: Judge, my response to that is that lab report that Mr. Crawford is referring to was originally filed in this Court House with the General District Court, September the 10th, 1980, unfortunately Mr. Crawford was not counsel at that time. Following that date on..Circuit Court Judge for this Court, Judge Stephenson on October 10th, 1980, and a discovery order ordered that this material provided to counsel for the defense, who at that time was Mr. William A. Parks, who had seen the lab report. It has been filed with this court more than the statutory 7 days as is required by law. Mr. Crawford and his associate became aware of it either that day or the following day and no attempt has been made to my knowledge to get Mr. Hamby here since then except maybe a phone call, which was..they got no answer and there are procedures for getting out of state witnesses. We brought four in

here today and as I understand it, Mr. Crawford's made no attempt.

MR CRAWFORD: We issued..we had the Clerk issue a summons, but there was.. you know, the Court's indicated at the time of the pretrial conference that there was not enough time to get anybody to follow that procedure.

JUDGE BYRD: Allright, I will..

MR CRAWFORD: And one other thing here that, if Mr. Singleton provided this copy to Mr. Parks, I would have gotten a copy cause Mr. Parks provided me with his whole file.

MR. SINGLETON: No, I provided him with no copies, it was on file in the General District Court Clerk's Office from September 10th on until about two weeks ago and Mr. Parks was fully aware of it.

MR. CRAWFORD: This is..you are saying that Mr. Parks was aware of it?

JUDGE BYRD: All right.

MR SINGLETON: I'm saying he was in this case, if he wasn't that was his dereliction, not mine(inaudible)

JUDGE BYRD: All right, I think it has been well aired and it's on the record and for the reasons that I have stated I will overrule your objection and I will admit the certificate subject to Deputy Armstrong closing that chain of custody from the time he got possession of it until he turned it over to Officer Bryan and we are going to take about a five-minute recess.

MR. CRAWFORD: I would just like to put one other thing on the record, Your Honor. I'm sure it probably would appear in the record but that the defendants were not afforded a preliminary hearing where, if they were then, filing it with the General District Court would be meaningful, but filing it with the General District Court without ever having a hearing, of

course, is meaningless.

JUDGE BYRD: Well, I think the record will show that a preliminary hearing was scheduled in District Court but then the case was nolle prossed right before the preliminary hearing and then submitted directly to the Grand Jury for the next term of Court. That's the reason it was originally filed, apparently, in the General District Court. All right, we will take a five-minute recess. Let the record show that the defendants and their counsel are present and that all members of the jury are present and the Commonwealth's Attorney is present.

VIRGINIA: IN THE CIRCUIT COURT OF BATH COUNTY.

COMMONWEALTH OF VIRGINIA

v. (UPON INDICTMENT FOR A FELONY - CASE NO. 1139)

JUANITA SHAFFIER MEAD, d.o.b. 6/29/1931

This day came the Attorney for the Commonwealth, and Juanita Shaffier Mead, age 50, who stands indicted for a felony, to-wit: did feloniously break and enter in the daytime, a storehouse belonging to Julian Shaffier with the intent to commit larceny, in violation of Section 18.2-91 as charged in the indictment, appeared according to the condition of her recognizance and came also Malcolm G. Crawford, her attorney.

Whereupon the accused was arraigned and after private consultation with her attorney, pleaded not guilty to the indictment, which plea was tendered by the accused in person.

The Court than impanelled twenty

qualified jurors, free from exceptions for the trial of the defendant, in the manner provided by law, three having been disqualified. Whereupon the attorney for the Commonwealth and the Attorney for the defendant exercised their rights to strike names from the panel, as provided by law, and the remaining twelve jurors, constituting the jury for the trial of the defendant, were duly sworn.

After opening statements, the court and jury heard the evidence presented by the Commonwealth and the defendant. At the conclusion of the Commonwealth's evidence, the attorney for the defendant moved the court to strike the Commonwealth's evidence which motion was overruled and exception was noted; at the conclusion of all the evidence, the attorney for the defendant renewed his motion to strike the Commonwealth's evidence, which motion was overruled and exception was noted, and were

adjourned over until tomorrow at 8:00

o'clock A.M.

Law Order Book 15
Page 392 Enter: July 8, 1981

/s/ Duncan M. Byrd, Jr.
Judge

VIRGINIA: IN THE CIRCUIT COURT OF BATH COUNTY

COMMONWEALTH OF VIRGINIA

v. (UPON INDICTMENT FOR A FELONY - CASE NO. 1139)

JUANITA SHAFFIER MEAD, d.o.b. 6/29/1931

This day came again the Attorney for the Commonwealth and came the defendant, Juanita Shaffier Mead, and her attorney, Malcolm G. Crawford, and the Jury adjourned over on July 8, 1981 appeared pursuant to their adjournment.

After hearing the evidence, the instructions of the court and argument of counsel, the jurors were sent to the jury room to consider their verdict. They subsequently returned their verdict in open court, reading: We, the jury find the accused Juanita S. Mead guilty of breaking and entering as charged in the indictment and fix her punishment at $1,000 Fine. B. G. McElwee, Foreman.

The Attorney for the defendant then

moved the court to set aside the verdict, which motion was overruled and exception was noted.

The Court then asked the defendant whether she desired to make a statement or to advance any reason why judgment should not be pronounced against her. The Court having heard and considered the defendant's statement by her attorney, the court finds the defendant guilty of breaking and entering as charged in the indictment and fixes her punishment at $1,000.00 Fine.

It is ordered that the defendant pay and the Commonwealth recover against the defendant a fine of $1,000.00 and costs in the amount of $1,483.90.

After pronouncing punishment the court advised the defendant of her right to petition to appeal to the Supreme Court of Virginia and that he will withhold the imposition of the punishment for thirty (30) days to allow them to apply for a writ of error.

It is ordered that W. Claude Dodson, Court Reporter, be allowed the sum of $17.50 out of the State Treasury, which amount is ordered certified to the Supreme Court for payment.

The court certified that at all times during the trial of this case the defendant was personally present and her attorney was likewise personally present and capably represented the defendant and all evidence and all incidents of trial were recorded by electronic equipment.

Enter: July 9, 1981

/s/ Duncan M. Byrd, Jr.
Judge

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VIRGINIA: IN THE CIRCUIT COURT OF BATH COUNTY

COMMONWEALTH OF VIRGINIA

v. (UPON INDICTMENT FOR A FELONY - CASE NO. 1140)

JUANITA SHAFFIER MEAD, d.o.b. 6/29/1931

This day came the Attorney for the Commonwealth, and Juanita Shaffier Mead, age 50 who stands indicted for a felony, to-wit: did feloniously commit larceny of the good and chattels of Julian Shaffier in the value of more than $200.00 in violation of Section 18.2-95 as charged in the indictment, appeared according to the condition of her recognizance and came also Malcolm G. Crawford, her attorney.

Whereupon the accused was arraigned and after private consultation with her said attorney, pleaded not guilty to the indictment, which plea was tendered by the accused in person.

The Court then impanelled twenty gualified jurors, free from exceptions

for the trial of the defendant, in the manner provided by law, three having been disqualified. Whereupon the attorney for the Commonwealth and the Attorney for the defendant exercised their rights to strike names from the panel, as provided by law, and the remaining twelve jurors, constituting the jury for the trial of the defendant, were duly sworn.

After opening statements, the court and jury heard the evidence presented by the Commonwealth and the defendant. At the conclusion of the Commonwealth's evidence, the attorney for the defendant moved the court to strike the Commonwealth's evidence which motion was overruled and exception was noted; at the conclusion of all the evidence, the attorney for the defendant renewed his motion to strike the Commonwealth's evidence, which motion was overruled and exception was noted, and were ajourned

over until tomorrow at 8:00 o'clock A.M.

Law Order Book 15

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Enter: July 8, 1981

/s/ Duncan M. Byrd, Jr.
Judge

VIRGINIA: IN THE CIRCUIT COURT OF BATH COUNTY

COMMONWEALTH OF VIRGINIA

v. (UPON INDICTMENT FOR A FELONY - CASE NO. 1140)

JUANITA SHAFFIER MEAD, d.o.b. 6/29/1931

This day came again the Attorney for the Commonwealth and came the defendant, Juanita Shaffier Mead, and her attorney, Malcolm G. Crawford and the Jury adjourned over on July 8, 1981 appeared pursuant to their adjournment.

After hearing the evidence, the instructions of the court and argument of counsel, the jurors were sent to the jury room to consider their verdict. They subsequently returned their verdict in open court, reading: We, the jury find the accused Juanita S. Mead guilty of Larceny as charged in the Indictment and fix her punishment at $1,000.00 Fine. E. G. McElwee, Foreman.

The Attorney for the defendant then

moved the court to set aside the verdict, which motion was overruled and exception was noted.

The Court then asked the defendant whether she desired to make a statment or to advance any reason why judgment should not be pronounced against her. The Court having heard and considered the defendant's statement by her attorney, the Court finds the defendant guilty of larceny as charged in the indictment and fixes her punishment at $1,000.00 Fine.

It is further orded that the defendant pay and the Commonwealth recover against the defendant a fine of $1,000.00 and costs in the amount of $57.50.

After pronouncing the punishment, the court advised the defendant of her right to petition to appeal to the Supreme Court of Virginia and that he will withhold imposition of the punishment for thirty (30) days to allow them to apply for a writ of error.

The Court certified that at all times during the trial of this case the defendant was personally present and her attorney was likewise personally present and capably represented the defendant and all evidence and all incidents of trial were recorded by electronic equipment.

Enter: July 9, 1981

/s/ Duncan M. Byrd, Jr.
Judge

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VIRGINIA: IN THE CIRCUIT COURT OF BATH COUNTY

COMMONWEALTH OF VIRGINIA

v. (UPON INDICTMENT FOR A FELONY - CASE NO. 1141)

WILLIAM LENIER HAMILTON, d.o.b. 6/28/1948

This day came the Attorney for the Commonwealth, and William Lenier Hamilton, age 33, who stands indicted for a felony, to-wit: did feloniously break and enter, in the daytime, a storehouse belonging to Julian Shaffier with the intent to commit larceny in violation of Section 18.2-91 as charged in the indictment, appeared according to the condition of his recognizance and came also Malcolm G. Crawford, his attorney.

Whereupon the accused was arraigned and after private consultation with his said attorney, pleaded not guilty to the indictment, which plea was tendered by the accused in person.

The Court then impanelled twenty qualified jurors, free from exceptions

for the trial of the defendant, in the manner provided by law, three having been disqualified. Whereupon the attorney for the Commonwealth and the attorney for the defendant exercised their rights to strike names from the panel, as provided by law, and the remining twelve jurors, constituting the jury for the trial of the defendant, were duly sworn.

After opening statements, the court and jury heard the evidence presented by the Commonwealth and the defendant. At the conclusion of the Commonwealth's evidence, the attorney for the defendant moved the court to strike the Commonwealth's evidence which motion was overruled and exception was noted; at the conclusion of all the evidence, the attorney for the defendant renewed his motion to strike the Commonwealth's evidence, which motion was overruled and exception was noted, and were

adjourned over until tomorrow at 8:00 o'clock A.M.

Law Order Book 15 Enter: July 8, 1981

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/s/ Duncan M. Byrd, Jr.
Judge

VIRGINIA: IN THE CIRCUIT COURT OF BATH COUNTY

COMMONWEALTH OF VIRGINIA

v. (UPON INDICTMENT FOR A FELONY - CASE NO. 1141)

WILLIAM LENIER HAMILTON, d.o.b. 6/28/1948

This day came again the Attorney for the Commonwealth and came the defendant, William Lenier Hamilton, and his attorney, Malcolm G. Crawford and the Jury adjourned over on July 8, 1981 appeared pursuant to their adjournment.

After hearing the evidence, the instructions of the court and argument of counsel, the jurors were sent to the jury room to consider their verdict. They subsequently returned their verdict in open court, reading: We, the jury find the accused William L. Hamilton guilty of Breaking and Entering as charged in the Indictment and fix his punishment at $1,000.00 Fine. B. G. McElwee, Foreman.

The Attorney for the defendant then moved the court to set aside the verdict,

which motion was overruled and exception was noted.

The Court then asked the defendant whether he desired to make a statement or to advance any reason why judgment should not be pronounced against him. The court having heard and considered the defendant's statement by his attorney, the court finds the defendant guilty of Breaking and entering as charged in the indictment and fixes his punishment at $1,000.00 Fine.

It is further ordered that the defendant pay and the Commonwealth recover against the defendant a fine of $1,000.00 and costs in the amount of $483.90.

After pronouncing punishment, the court advised the defendant of his right to petition to appeal to the Supreme Court of Virginia and that he will withhold the imposition of the punishment for thirty (30) days to allow him to apply for a writ of error.

The Court certifies that at all times during the trial of this case the defendant was personally present and his attorney was likewise personally present and capably represented the defendant and all evidence and all incidents of trial were recorded by electronic equipment.

It is ordered that W. Claude Dodson, Court Reported, be allowed the sum of $17.50 out of the State Treasury, which amount is ordered certified to the Supreme Court for payment.

Enter: July 9, 1981

/s/ Duncan M. Byrd, Jr.
Judge

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VIRGINIA: IN THE CIRCUIT COURT OF BATH COUNTY

COMMONWEALTH OF VIRGINIA

v. (UPON INDICTMENT FOR A FELONY - CASE NO. 1142)

WILLIAM LENIER HAMILTON, d.o.b. 6/28/1948

This day came the Attorney for the Commonwealth, and William Lenier Hamilton, age 33, who stands indicted for a felony, to-wit: did feloniously commit larceny of the goods and chattels of Julian Shaffier in the value of more than $200.00 in violation of 18.2-95 as charged in the indictment, appeared according to the condition of his recognizance and came also Malcolm G. Crawford, his attorney.

Whereupon the accused was arraigned and after private consultation with his said attorney, pleaded not guilty to the indictment, which plea was tendered by the accused in person.

The Court then impanelled twenty qualified jurors, free from exceptions

for the trial of the defendant, in the manner provided by law, three having been disqualified. Whereupon the attorney for the Commonwealth and the attorney for the defendant exercised their rights to strike names from the panel, as provided by law, and the remaining twelve jurors, constituting the jury for the trial of the defendant, were duly sworn.

After opening statements, the court and jury heard the evidence presented by the Commonwealth and the defendant. At the conclusion of the Commonwealth's evidence, the attorney for the defendant moved the court to strike the Commonwealth's evidence which motion was overruled and exception noted; at the conclusion of all the evidence, the attorney for the defendant renewed his motion to strike the Commonwealth's evidence, which motion was overruled and exception was noted, and

were adjourned over until tomorrow at 8:00 o'clock A.M.

Law Order Book 15 Enter: July 8, 1981

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/s/ Duncan M. Byrd, Jr.
Judge

VIRGINIA: IN THE CIRCUIT COURT OF BATH COUNTY

COMMONWEALTH OF VIRGINIA

v. (UPON INDICTMENT FOR A FELONY - CASE NO. 1142)

WILLIAM LENIER HAMILTON, d.o.b. 6/28/1948

This day came again the Attorney for the Commonwealth and came the defendant, William Lenier Hamilton, and his attorney, Malcolm G. Crawford and the Jury adjourned over on July 8, 1981 appeared pursuant to their adjournment.

After hearing the evidence, the instructions of the court and argument of counsel, the jurors were sent to the jury room to consider their verdict. They subsequently returned their verdict in open court, reading: We, the Jury find the accused William L. Hamilton guilty of Larceny as charged in the indictment and fix his punishment at $1,000.00 Fine. B. G. McElwee, Foreman.

The Attorney for the defendant then

moved the court to set aside the verdict, which motion was overruled and exception was noted.

The Court then asked the defendant whether he desired to make a statement or to advance any reason why judgment should not be pronounced against him. The Court having heard and considered the defendant's statement by his attorney, the Court finds the defendant guilty of Larceny as charged in the indictment and fixes his punishment at $1,000.00 Fine.

It is further ordered that the defendant pay and the Commonwealth recover against the defendant a fine of $1,000.00 and costs in the amount of $57.50.

After pronouncing punishment, the court advised the defendant of his right to petition to appeal to the Supreme Court of Virginia and that he will withhold the imposition of the punishment for thirty (30)

days to allow them to apply for a writ of error.

The Court certified that at all times during the trial of this case the defendant was personally present and his attorney was likewise personally present and capably represented the defendant and all evidence and all incidents of trial were recorded by electronic equipment.

Enter: July 9, 1981

/s/ Duncan M. Byrd, Jr.
Judge

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VIRGINIA: In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 4th day of June, 1982.

Juanita Shaffier Mead and
William Lenier Hamilton,

Appellants,

against Record No. 811710
Circuit Court Nos. 1139 through 1142

Commonwealth of Virginia,

Appellee.

From the Circuit Court of Bath County

Finding no reversible error in the judgments complained of, the court refuses the petitions for appeal filed in the above-styled case.

A Copy,

Teste:

Allen L. Lucy, Clerk

By:

Deputy Clerk

IN THE SUPREME COURT OF VIRGINIA AT RICHMOND

| | | |
|---|---|---|
| WILLIAM L. HAMILTON | ) | |
| and | ) | |
| JUANITA S. MEAD, Appellants | ) | |
| v. | ) | Record No. 811710 |
| COMMONWEALTH OF VIRGINIA, | ) | |
| Appellee | ) | |

NOTICE OF APPEAL

TO THE

SUPREME COURT OF THE UNITED STATES

Notice is hereby given that William L. Hamilton and Juanita S. Mead, the appellants above named, hereby appeal to the Supreme Court of the United States from the final judgment of the Supreme Court of Virginia entered on June 4, 1982, finding no reversible error in the judgment of the Circuit Court of Bath County. This appeal is taken pursuant to 28 USC 1257 (2).

JUANITA S. MEAD
and
WILLIAM L. HAMILTON

BY COUNSEL

M. G. Crawford, Esquire, p.q.
15 South Jefferson St.
Lexington, VA 24450

/s/ M. G. Crawford

CERTIFICATE

I Malcolm G. Crawford, do hereby certify that I have served a true copy of the foregoing Notice of Appeal on John C. Singleton, Commonwealth's Attorney for Bath County with a business address of P. O. Box 116, Warm Springs, Virginia 24484, this 27th day of August, 1982, pursuant to Rule 28.3 of the Rules of the Supreme Court of the United States. All parties required to be served have been served.

/s/ M. G. Crawford

Commonwealth of Virginia
Department of General Services
Division of Consolidated Laboratory Services

CERTIFICATE OF ANALYSIS

Western Laboratory
920 S. Jefferson St.
Room #219
Roanoke, VA 24016

Tele. No. (703) 982-7192

September 8, 1980

Sheriff
Bath County Sheriff's Department
P. O. Box 218
Warm Springs, VA 24484

Attention: R. L. Armstrong
T. Chapman

Case # 81780A F.S. Lab # 80W-1034

Victim(s): SHAFFIER, Julian R.
Examiner: James E. Hamby
Suspect(s): MEAD, Juanita S.
HAMILTON, William L.
Date Received: 9/2/80

Evidence Submitted By: Sheriff J. W. Bryan, Jr.

Item Q5 One (1) right value cover, painted gold in color.

Item Q6 One (1) left value cover, painted gold in color.

Item K1 One (1) right head from engine.

Item K2 One (1) left head from engine.

FINDINGS:

Examination of the Items Q5 and Q6 value covers in conjunction with the Items K1 and K2 engine heads revealed that, at one time, Q5 and K1 plus Q6 and K2 were single assembled units.

The evidence is available for pick up at this laboratory. Other requested examinations will be subject of future reports.

/s/ J. E. Hamby

State of Virginia
City/County of Roanoke, to-wit:

This day personally appeared before me, Carol M. Moseley, a notary public, in and for the city/county in the Commonwealth of Virginia, James E. Hamby, who signed the foregoing Certificate of Analysis, before me, and after being duly sworn, made oath (1) that he performed the analysis and/or examination the results of which are herein contained, (2) that said analysis and/or examination was performed in a laboratory operated by the Division of Consolidated Laboratory Services of the Commonwealth or authorized by such Division to conduct such analysis and/or examination and (3) that this Certificate of Analysis is true and correct.

Given under my hand this 8th day of September, 1980.

My commission expires: June 19, 1982.

/s/ Carol M. Moseley
Notary Public

Filed in the Clerk's Office of Bath County Circuit Court June 30, 1981, _____
_____, Deputy Clerk.

VIRGINIA: IN THE CIRCUIT COURT OF BATH COUNTY

COMMONWEALTH OF VIRGINIA

v. (UPON INDICTMENTS FOR FELONIES - CASE NOS. 1139-1142)

WILLIAM L. HAMILTON AND JUANITA MEAD

This cause came on the 10th day of October, 1980, to be heard upon the motions of the defendants for Discovery in accordance with rules of the Supreme Court of Virginia, for a Bill of Particulars, and to supress the evidence seized in a search of the premises owned by the defendant, Juanita Mead, on August 22, 1980; upon the appearance of the defendant, William L. Hamilton, in person and by counsel; upon the appearance of the defendant, Juanita Mead by counsel; upon the appearance of the Attorney for the Commonwealth; and was argued by counsel.

And it appearing proper to do so, it is

accordingly ADJUDGED, ORDERED, and DECREED as follows:

1. That the attorney for the Commonwealth shall, on or before November 14, 1980, permit the accused to inspect and copy or photograph any relivant:

(a) Written or recorded statements or confessions made by the accused or copies thereof that are known by the Commonwealth's attorney to be within the possessions, custody, or control of the Commonwealth;

(b) Written reports of autoposies, ballistics tests, fingerprint analyses, handwriting analyses, blood urine and breath test, other scientific reports and written reports of a physical or mental examination of the accused or the alleged victim made in connection with this case or copies thereof that are known by the Commonwealth's attorney to be within the possession, custody or control of the

Commonwealth.

2. That the attorney for the Commonwealth shall, on or before November 14, 1980, permit the accused to inspect and copy or photograph the automobile and all items seized in the search of August 22, 1980 that are in the possession, custody or control of the Commonwealth upon the grounds that the accused have stated that the items sought are material for the preparation of the defense and that the request for such information is reasonable.

3. That the attorney for the Commonwealth shall, on or before November 14, 1980, or as soon as such information comes to the attention of the attorney for the Commonwealth provide the accused with each and every person known by the Commonwealth to be in possession of evidence which may tend to be exculpatory of the accused.

That the attorney for the Commonwealth, shall on or before November 14, 1980, provide the defendants with a Bill of Particulars specifying what the defendants did in perpetrating the alleged crimes and when and where the same occurred.

It is further ADJUDGED, ORDERED and DECREED as follows:

1. That on or before November 14, 1980 the defendants shall permit the attorney for the Commonwealth to inspect, copy or photograph any written reports described in the preceding paragraph one (1) of this order and all other provided for under Rule 3A:14 (c).

2. That the defendants shall disclose the place at which they and each of them claim to have been at the time of the commission of the alleged offenses within fifteen (15) days of the receipt by the defendants, from the attorney for the Commonwealth, of the information

required by the preceding paragraph 4 of this order.

It is further ADJUDGED, ORDERED and DECREED that the defendant's motion to suppress the evidence seized pursuant to the search warrant of August 22, 1980 should be and is hereby taken under advisement.

And this case is continued.

Enter: October 17, 1980

/s/ Roscoe Stephenson
Judge

Seen and objected to:

/s/ John C. Singleton a.c.

/s/ William Parks p.d.

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July 2, 1981

Claude W. Dodson, Clerk
Circuit Court of Bath County
Warm Springs, Virginia

Re: Commonwealth v. Juanita Mead
Commonwealth v. William Hamilton

Dear Mr. Dodson:

Please summon the following additional witnesses for the trial to be held on July 8, 1981:

1. James E. Hamby, Division of Consolidated Laboratory Services, Bureau of Forensic Science, 920 South Jefferson Street, Roanoke, Virginia 24016.

2. Robert Trainer, Route 92, Greenbriar County, West Virginia

3. Spencer Ray Hull, Route 92, Greenbriar County, West Virginia

4. Donnie Robertson, Warm Springs, Virginia

5. Wayne Burns, Bacolva, Virginia

Thank you for your attention to this.

Respectfully yours,

Malcolm G. Crawford

The Commonwealth of Virginia

To the Sheriff of the City of Roanoke, Greeting:

WE COMMAND YOU, That you summon James E. Hamby - Division of Consolidated Laboratory Services, Bureau of Forensic Science, 920 South Jefferson Street, Roanoke, VA. 24016 to appear befor the Judge of our Circuit Court of the County of Bath at the Courthouse thereof, on the 8th day of July, 1981, at 9:30 o'clock A.M., to testify and the truth to say in behalf of the Defendants, in a certain matter of controversy in our said Court, before the said Judge, depending and undetermined, between the Commonwealth of Virginia, Plaintiff, and Juanita Mead and William Hamilton, Defendants.

And have then there this writ.

WITNESS, W. Claude Dodson, Clerk of our said Court, at the Courthouse, this 6th day of July, 1981, and in the 206th

year of the Commonwealth.

/s/ W. Claude Dodson ,
Clerk

CONSTITUTION OF UNITED STATES

(Amendment VI)

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

CONSTITUTION OF UNITED STATES

(Amendment XIV)

All personsborn or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or

immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Code of Virginia 1950, As Amended

§19.2-187. Admission into evidence of certain certificates of analysis.

In any hearing or trial of any criminal offense, a certificate of analysis of a person performing an analysis or examination, performed in any laboratory operated by the Division of Consolidated Laboratory Services or authorized by the Federal Bureau of Alcohol, Tobacco and Firearms, or the Federal Drug Enforcement Administration when such certificate is duly attested by such person, shall be admissible in evidence as evidence of the facts therein stated and the results of the analysis or examination referred to therein, provided that the certificate of analysis shall be filed with the clerk of the court hearing the case at least seven days prior to the hearing or trial.

Any such certificate of analysis

purporting to be signed by any such person shall be admissible as evidence in such hearing or trial without any proof of the seal or signature or of the official character of the person whose name is signed to it.

§19.2-187.1. Right to examine person performing analysis.

The accused in any hearing or trial in which a certificate of analysis is admitted into evidence pursuant to §19.2-187 or §19.2-187.01 shall have the right to call the person performing such analysis or examination or involved in the chain of custody as a witness therein, and examine him in the same manner as if he had been called as an adverse witness. Such witness shall be summoned and appear at the cost of the Commonwealth.

Rules of Supreme Court of Virginia

Rule 5:29. Denial of Appeal; Petition

for Rehearing.

When an appeal is denied, the clerk of this Court shall notify counsel for the appellant and counsel for the appellee in writing. Counsel for the appellant, may, within, fourteen (14) days after the date of the notice, file a petition for rehearing in the office of the clerk of this Court. The petition shall state that a copy has been mailed or delivered to counsel for the appellee. Eight (8) copies shall be filed. Carbon copies are acceptable. Oral argument on the petition will not be allowed. No responsive brief shall be filed unless requested by the Court. The clerk of this Court shall notify counsel for the appellant and counsel for the appellee of the action taken by the Court on the petition for rehearing.